

AGENDA

MILWAUKIE CITY COUNCIL FEBRUARY 21, 2006

MILWAUKIE CITY HALL
10722 SE Main Street

1976th MEETING

REGULAR SESSION – 7:00 p.m.

I. CALL TO ORDER
Pledge of Allegiance

2. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS

Milwaukie High School Student of the Month

3. CONSENT AGENDA *(These items are considered to be routine, and therefore, will not be allotted Council discussion time on the agenda. The items may be passed by the Council in one blanket motion. Any Council member may remove an item from the “Consent” portion of the agenda for discussion or questions by requesting such action prior to consideration of that portion of the agenda.)*

A. Milwaukie City Council Minutes

Regular Session January 17, 2006

B. Amend Contract Amount for HVAC Repairs and Maintenance for City Facilities – EW Consulting and Services

C. Amend Contract and Purchase Order Amount for Carpentry Work and Repairs for City Buildings – Craftsman Home Remodeling Services

4. AUDIENCE PARTICIPATION *(The Presiding Officer will call for statements from citizens regarding issues relating to the City. Pursuant to Section 2.04.140, Milwaukie Municipal Code, only issues that are “not on the agenda” may be raised. In addition, issues that await a Council decision and for which the record is closed may not be discussed. Persons wishing to address the Council shall first complete a comment card and return it to the City Recorder. Pursuant to Section 2.04.360, Milwaukie Municipal Code, “all remarks shall be directed to the whole Council, and the Presiding Officer may limit comments or refuse recognition if the remarks become irrelevant, repetitious, personal, impertinent, or slanderous.” The Presiding Officer may limit the time permitted for presentations and may request that a spokesperson be selected for a group of persons wishing to speak.)*

5. PUBLIC HEARING *(Public Comment will be allowed on items appearing on this portion of the agenda following a brief staff report presenting the item and action requested. The Mayor may limit testimony.)*

None Scheduled

6. **OTHER BUSINESS** *(These items will be presented individually by staff or other appropriate individuals. A synopsis of each item together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item.)*

- A. **Milwaukie Projects in Proposed Metro Natural Areas Bond Measure – Resolution (JoAnn Herrigel)**
- B. **Amend Milwaukie Municipal Code Chapter 3.20 Relating to the Annual Levy of the City’s Permanent Rate – Ordinance (Mike Swanson)**
- C. **Council Reports**

7. **INFORMATION**

Citizens Utility Advisory Board Minutes January 11, 2006

8. **ADJOURNMENT**

Public Information

- Executive Session: The Milwaukie City Council will go into Executive Session immediately following adjournment at pursuant to ORS 192.660(2)(i) performance evaluation of public officers and employees.

All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions as provided by ORS 192.660(3) but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.

- For assistance/service per the Americans with Disabilities Act (ADA), please dial TDD 503.786.7555
- The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
JANUARY 17, 2006**

CALL TO ORDER

Mayor Bernard called the 1974th meeting of the Milwaukie City Council to order at 7:00 p.m. in the City Hall Council Chambers. The following Councilors were present:

Council President Deborah Barnes	Joe Loomis
Susan Stone	Carlotta Collette

Staff present:

Mike Swanson, City Manager	Lindsey Nesbitt, Associate Planner
John Pinkstaff, City Attorney	

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

Mr. Swanson introduced John Pinkstaff who was taking Mr. Firestone's place for the evening.

Annual Audit Report

Tom Glogau, Grove, Swank & Mueller, reviewed the audit report. He referred to page 26 and pointed out five funds that had deficit balances at the end of the year. Oregon statute contemplates that each fund would operate at least on a break-even basis. The library services fund had a very small deficit of less than \$5,000 in a fund that ran \$1.5 million of expenditures. It was dust on the scales in terms of the general fund, so he was not concerned. The park land purchase fund was relatively small and inactive, so that would be easy to cure by transferring money and was not a problem. The community development and engineering funds both had small negative balances and half of what it was the previous year. Those funds existed by charging other funds for their services, so adjusting those charges could easily cure deficits. This administrative services fund was in a similar situation. Although technically these violated Oregon statutes, it did not indicate a mis-spending of money or an overspending of resources that was not curable. The next section identified five funds where expenditures were in excess of appropriations, which Oregon law prohibits. Again, this was not a concern as transferring appropriation dollars from categories that were not over expended could cure it. As long as the fund as a whole was not over expended, the Council met its contract with the voters, which was to not spend more than budgeted. He and Mr. Taylor had discussed how to keep this from occurring in the future.

He referred to page 9, which was a summary of the enterprise fund. The operating funds had a very small fund balance, and the reserve funds had very large balances.

The reserve fund was money set aside for specific purposes, and at its pleasure the Council could move the money back to the operating fund. In this case, the reserve funds did not have as much money because operations would need to draw some of that. Mr. Glogau thought those were the significant portions of the audit report that the Council needed to know about and noted these violations were by no means severe.

CONSENT AGENDA

It was moved by Councilor Barnes and seconded by Councilor Collette to approve the consent agenda. Motion passed unanimously. [5:0]

A. Milwaukie City Council Minutes

- 1. Work Session December 6, 2005**
- 2. Regular Session December 6, 2005**
- 3. Regular Session December 20, 2005**

B. OLCC Application – Roswell Market, 8929 SE 42nd Avenue.

AUDIENCE PARTICIPATION

- Tim Salyers, 16480 SE Sterling Circle, Oak Grove.**

Mr. Salyers was the president of the Milwaukie Mustang Youth Basketball Association and a former board member of the Milwaukie Jr. Baseball Association. He discussed the upcoming North Clackamas School District's bond measure. In November a bond measure was proposed that would greatly improve areas schools and should be passed. This bond would include new gymnasiums for Rowe Middle School and Linwood Elementary. As the president of youth basketball he could say these new gyms were a step in the right direction for helping the Milwaukie boys and girls become better basketball players and better students. There were currently 600 boys and girls in the organization, and he was looking to expand so more kids could get involved. There was a great community environment with outstanding coaches and kids in the program. The gyms provided by this bond measure would increase the potential of seeing a kid improve communication skills, self-esteem, and teamwork.

Also in the bond is partial funding for an artificial all-weather turf field at the Milwaukie High School. The original plan for the North Clackamas Park was to have a full-sized soccer field in it. Currently, youth soccer does not use the field at Milwaukie High School, and time for youth football was limited. A turf field at the high school would take pressure off the City of Milwaukie and the North Clackamas Parks and Recreation District to fulfill their promise of developing soccer and football fields.

He heard a rumbling from citizens that the District would not spend enough money in Milwaukie compared to the east side of I-205. There was a tremendous growth in that area, and they needed to build new schools. Obviously that would cost more than doing additions to Milwaukie's schools. He understood that a new high school could be part of the bond measure, and he liked that because that would dilute Clackamas High School's power and population making it less dominant. Though they will be spending more money elsewhere, what would be spent in Milwaukie would be great for its athletics program. Mr. Salyers respectfully requested that the City Council adopt a resolution or write a letter of support to the School District for its bond measure.

PUBLIC HEARING

A. Findings and Conditions for Norm Scott Subdivision 8555 SE 28th Avenue, Appeal File AP-05-03

Mr. Swanson explained that the staff person for this item, Mr. Firestone, was ill and requested that the City Council make a motion to continue the hearing to February 7, 2006.

It was moved by Mayor Bernard and seconded by Councilor Stone to continue the public hearing to February 7, 2006. Motion passed unanimously. [5:0]

B. VR-05-03 and request to amend condition of approval for application CSO-05-02

Mayor Bernard called the public hearing to order at 7:18 p.m. The purpose of the hearing was to consider a request to amend the conditions of approval for application CSO-05-02 to allow the increase of spill light at the property line from 0.5-foot candles to 1.0-foot candles and to authorize installation of 70-foot lighting poles at North Clackamas Park.

The applicant had the burden of proving that the application was consistent with the City of Milwaukie's Comprehensive Plan and Zoning Ordinance sections 19.301, residential R-10 zone; 19.321 Community Service Overlay; 19.700 variances, exceptions, and home improvement exceptions; and 19.1011.3 minor quasi-judicial review.

All testimony and evidence was to be directed toward the applicable substantive criteria or other criteria in the plan or land use regulation that one believed would apply to the decision. Failure to raise an issue accompanied by statements or evidence sufficient to afford the City Council an adequate opportunity to respond to each issue would preclude an appeal to the City Council or LUBA based on that issue. Failure to raise constitutional or other issues related to proposed conditions of approval with sufficient specificity to allow a response precludes an action for damages in circuit court. Mayor Bernard reviewed the conduct of the hearing.

Conflicts of interest and site visits: The Mayor and all Councilors had visited the site. There were no ex parte contacts or actual conflicts of interest declared. There were no challenges to any Council member's impartiality or ability to participate in the decision.

Jurisdictional issues: There were no objections to the Council's jurisdiction to consider the matter.

Staff report: **Associate Planner Lindsey Nesbitt** provided the staff report. Ms. Nesbitt distributed additional correspondence that was submitted after the packet was prepared. The applicant, North Clackamas Parks and Recreation District (NCPRD), was seeking City Council approval for a variance to exceed the maximum height of the community service overlay (CSO) zone and an amendment to a condition of approval from the previous CSO application that was approved August 2005. The original CSO application was appealed to the City Council, and since it was the final decision maker on the previous, it was brought before the City Council rather than the Planning Commission.

In August 2005 the City Council upheld the Planning Commission's decision to approve development of North Clackamas Park but adopted a modified site plan that authorized development of four youth ballfields. One of those fields would be used as a flex soccer field/ballfield. The approval also authorized additional construction of parking spaces, restroom facilities, a concession stand, walking trails, and numerous areas of natural resource and vegetative enhancements. As part of the application, the applicant proposed lighting for the parking lot and the ballfields. However, in the original application, the applicant proposed 70-foot tall lighting poles, and the code only permits structures to be 50-feet through the CSO process. A condition of approval was adopted requiring the applicant to either reduce the lighting poles to 50-feet, apply for a variance, or apply for a code change to authorize utilities or structures such as lighting poles in ballfields to exceed the maximum height limitation. In this case the applicant took the option of applying for a variance. The applicant was present and was accompanied by the lighting consultant.

The CSO zone allows the adoption of conditions to mitigate potential adverse impacts. A condition was adopted that limited lighting spill onto the adjacent residential properties. Along the south property line, the condition was that the lighting spill could not exceed 0.5-foot candles. The applicant was required to prepare a photometric plan demonstrating that there were no more than 0.5-foot candles along the south property line south of the vegetation. The applicant prepared the plan, and only a few areas exceeded 0.5-foot candles but was less than 1.0-foot candles. The applicant requested an amendment to that condition in case the 0.5-foot candles was exceeded. Staff reviewed the applicant's argument and supported the amendment. The photometric plan did not take into consideration the existing vegetation that would actually block the light. When the poles were installed and lights turned on, it might very well be 0.5-foot candles or lower. There might be gaps in the vegetation where the 0.5-foot candles were exceeded, so the applicant requested the amendment to that condition. Part of the argument was that the existing lights were floodlight, and the new lights would have the latest technology that would do a better job of directing light to the field. The nearest residence was approximately 480-feet away where the candle foot measurement would be "0". There would be no light trespass at the residence. The lights would also shut off at 10:00 p.m. and would be operated in the summer and early fall when 10:00 p.m. was shortly after sunset.

The applicant submitted a variance request to exceed the maximum height limitation. Currently, there were eight poles approximately 64-feet in height, and the applicant proposed to put in new poles that were 70-feet in height. There were three criteria for the variance. The first was that the applicant had to demonstrate there were unusual conditions over which he had no control. In this case, staff believed the unusual condition was the code. Community service uses were permitted in residential zones. The height limitation generally applied to buildings and not lighting poles. They believed the height limitation was not to allow huge 70-, 80-, 90-foot buildings next to residential homes. It did not really take into consideration the community service use of a ballfield. She had done some research and found two examples of variances that were approved for other CSO uses for the construction of cell towers. The argument in this case was that the height limitation of 50-feet did not work for the tower as it needed to be taller, so the signal could be sent without running into buildings. In this case the applicant argued

that with a 50-foot pole, the light would shine differently. When a ballplayer looked up to catch a fly ball the light was directed into their eyes and created temporary blindness. With a 70-foot tall pole, the light would be directed downward and would not shine into the players' eyes. There was a diagram in the site plan showing that. Staff believed those were the unusual conditions. The applicant was required to demonstrate there were no feasible alternatives. In the narrative, the applicant provided four alternatives. One was to provide no lighting. The second was to provide 50-foot poles. The third was to plant additional vegetation along the property line. The applicant would explain the feasibility of each alternative. Staff believed the applicant demonstrated that the 70-foot lighting pole was the minimum necessary to provide adequate, safe lighting for ball players. Staff believed the applicant had demonstrated that the new lights would be better than the existing floodlights with better light control to reduce spill light on adjacent property. The new poles were only 6-feet taller than the existing poles. The applicant would plant vegetation along the property line to help reduce the impacts of light onto adjacent property. Staff recommended approval of the variance application and approval of the amendment to the CSO.

Mayor Bernard understood the variance was requested only on the ballfields and not the parking lot.

Ms. Nesbitt replied that was correct; it was only for the baseball field lighting.

Correspondence:

There was no additional correspondence other than that provided by Ms. Nesbitt earlier in the meeting.

Applicant Presentation

Charlie Ciecko, NCPRD, introduced Senior Planner Michelle Healey and Chris Fout with Sparling Electrical Engineers, and Mark Hadley of W&H Pacific responsible for the design and engineering of this project.

As Ms. Nesbitt indicated the purpose for NCPRD's coming before the City Council was to request several modifications to the August 16, 2005 approval. The first item was a request for a variance on the lighting pole height, and the second was a modification of one of the conditions of approval related to spill light. The Council approved this concept plan on August 16, 2005. Among the major changes to the modified plan were a reduction in parking, elimination of a full-sized soccer field at the west end of the park along with the lighting that had been proposed for that facility. There were enhancements to the walking trail and other elements of the environment, the addition of another restroom, and a small picnic area near the entrance of the park. Condition of approval #5 stated that field light poles would be limited to 50-feet or that the District would come before the City Council and request either a variance or a zone text amendment. After considering the options, the District elected to request the variance that would allow the poles to be mounted on 70-foot metal poles. Taller poles would minimize potential problems with player safety. The lower light poles would have the light shine directly into the players' eyes. They would also minimize the impact of the effectiveness of the shields on the lights. The taller poles minimized spill light into adjacent non-target areas. He referred to staff report page 5.B.4 and the diagram that showed the impact on the angle of the light. The 70-foot poles showed a 55-degree

angle which was steeper than that provided on the 50-foot pole. That caused the light to be more directly in the players' eyes, and light would spill beyond the intended target. The taller the pole, the better one was able to control the targeting of that light. The 70-foot poles appeared to better achieve the objectives to both the District relating the player safety and the City in minimizing the impacts to the surrounding properties.

He referred to page 10 of the application and the options. The first alternative was to not provide lighting at the fields. As indicated in the original land use application and the various public venues at which lighting was discussed, there was a serious and continuing shortage of field space within the District. By adding lighting, the impact of the four new fields was doubled. The District felt and continued to feel that it was very important to provide lights on those fields to get the maximum impact from the significant investment the District was making in this development. The second alternative was to limit the poles to 50-feet. He had explained the problems regarding to player safety and light spill onto non-target areas. The third was to plant additional vegetation along the property border in front of access gates. He pointed out their locations. The District could plant vegetation in front of those gates and eliminate the neighbors' access to their property. The District concluded it would be best to leave those gates, so people had a way to access their property. He understood the property owners felt the same way. The only other criterion that came into play was that the adverse effects that might be the result of the variance should be mitigated to the extent feasible. The District believed the taller pole achieved that objective.

Councilor Collette had heard comments from someone who understood there would be no lights. Was lighting included in as part of the final plan?

Mr. Ciecko replied the lighting was approved as part of the CSO and the other permits that were previously approved by the Planning Commission and City Council.

Councilor Stone asked if the 70-foot poles were a typical height for ballfields.

Mr. Ciecko reported that Clackamas High School has four 80-foot poles and two 70-foot poles on its football field, Lakeridge High School has 90-foot poles on its football field and soccer field, Tualatin Hills Park and Recreation District has two baseball fields all on 90-foot poles, one soccer field on 90-foot poles, and two softball fields on 65-70-foot poles. He understood the Tualatin Hills fields were in residential neighborhoods.

Councilor Stone asked if that was the case then how was it that this proposal came to the Council with 50-foot poles if that was typical usage in a ballfield.

Mr. Ciecko replied that went to the limitations in the CSO portion of the ordinance that limited structure height. As Ms. Nesbitt indicated, that was typically assumed to be for building height, and consideration may not have been given to pole height for athletic field lighting.

Mr. Ciecko said the second proposal related to condition of approval #4(e) that required the District to submit a photometric plan that demonstrated there would be no more than 0.5-foot candle of spill light on the south side of the park's southern boundary. This would be measured south of the existing tree line prior to installing the field lights. Mr. Ciecko pointed out the park's southern boundary and the area of applicability on a map. He referred to Exhibit 3, the photometric plan. There was a line that ran about 190-feet,

and the distance from the south property line was approximately 20-feet. That line indicated where the 0.5-foot candle standard was achieved. To the north of that line, the readings were higher than 0.5-foot candle. To the south of that line, they were equal to or less than the 0.5-foot candle. As Ms. Nesbitt indicated in her presentation, the impact of the existing line of trees was not taken into account by the plan. The applicant felt that if this plan had taken that line of trees into account, then there would be a significant reduction of any spill light into that area, and the District could probably meet the standard. The area in question was quite small and measured less than 0.1-acres. It was in an area currently designated flood plain and/or wetland, so the likelihood of that area ever being developed and subsequently having residential uses impacted by spill light in that area was remote. The applicant proposed an amendment to the existing condition that would say that the photometric plan shall demonstrate no more than 1.0-foot candle south of the existing property line measured behind the tree line. If the tree line were taken into account, the applicant was confident it could meet the condition as it was currently written. The land was undeveloped and the closest residence was 487-feet south and west to this particular area. The one structure located to the south on the plan was an outbuilding and not a habitable structure.

Mayor Bernard asked the meaning of a 1.0-foot candle. He lives 19 blocks from Milwaukie High School and can see the field lights, but he understood the 1-foot candle had to do with what was seen from the ground.

Mr. Fouts, Sparling, 400 SW 5th Avenue, Portland. He explained a foot-candle referred to the amount of light delivered in one square foot. For example, in a room such as an office or council chamber, one tried to deliver 40- to 50-foot candles for the tasks taking place in that room. Outdoor lighting, depending on the activity, could be less. If one stood under a typical residential street lighting system luminaire with a light meter one could measure approximately 4.0-foot candles. Between the luminaires there was substantially less light and would measure about 0.2- to 0.5-foot candles. One could look at that and have an idea of the amount of light delivered in these instances and how that might relate to a larger quantity of light.

Testimony in support

- **John Denny, Kids First of North Clackamas, 11233 SE 27th Avenue.**

Mr. Denny spoke on behalf of the youth groups in the area and expressed excitement with the project. He stressed the importance of having lights to double the use both for practices and games. He discussed the safety and height of light poles. When this project was going forward he spoke with the athletic director of Gladstone High School and told him there might be light poles available. He was excited about that, but those involved with field lighting told him the poles were not high enough for use on the varsity ballfield. Mr. Denny assumed it was a safety issue, and the poles needed to be higher. He urged the City Council to approve the variance so the area could have safe fields that could be used twice a day.

- **Tim Salyers, Milwaukie Youth Mustang Basketball, 16480 SE Sterling Circle, Clackamas County.**

Mr. Salyers like the idea of lights in the park because it doubled the use. It would increase the opportunities for tournaments, evening games, and gave them a niche in

the baseball market. Instead of four fields available during the evenings, there would be eight fields. Currently, the lights were 64-feet with 1980's technology. 2005 technology and 70-foot lights sounded better to him. He thought the glare would be nonexistent, and he was excited about coaching some games under the lights.

- **Rick Frank, Milwaukie Jr. Baseball and Mustang Youth Football, 4485 SE Rhodesa Street.**

Mr. Frank was excited about the prospect of having lights on the field and had looked into the process of getting them installed. Mr. Salyers had commented on the high school renovations included in the bond measure, and Mayor Bernard mentioned that he could see the lights from Milwaukie High School. One of the things in the bond measure would take the old lights down and locate new metal poles closer to the field resulting in less spill light. He assumed those poles would be higher and go through a process similar to this one. The International-Dark Association (IDA), founded by astronomers and others interested in keeping the skies dark at night, stated on its website that it would much rather have higher poles that created less spill light because of the reduced angle and reflection. In 2003, the IDA gave an award to a ballfield complex similar to North Clackamas Park in Tucson, Arizona for its efforts in maintaining the dark sky. The IDA recommended higher poles to promote dark skies. Mr. Frank discussed the safety factors. When lights were at a lower level, they were at more of an angle. When the ballplayers looked up, it was more likely they were looking into that light. In football and baseball, things were coming at the players through the air, so it was important to provide that additional safety and not lose things in the light. The higher poles provided benefits and improved the environment around the fields and the playing area. This was an opportunity to make things better for everyone involved. Parties had worked to build consensus, and this was a smart decision. The lights were needed, and the higher poles would make it better for everyone. He addressed the 0.5- and 1.0-foot candle and suggested going out into the night and try to determine the difference. All of the residences in that area were approximately 400-feet from where that measurement was taken. He encouraged the City Council to approve the variance as this was a win-win opportunity.

Raising Questions:

- **Dick Shook, 4815 SE Casa del Rey Drive, Clackamas County.**

Mr. Shook spoke as a neighbor of the park who lived on the bluff on the north side of the park. His house was about 650-feet from the nearest light standard. He heard during testimony at the public hearings from both the District Advisory Board (DAB) and youth sports that the lights were not necessary. They were a nicety but not a necessity. He had not heard spill light defined. He had seen pictures of lighted ballfields, and it was like a lampshade. Even though one did not have direct light on his property, one could see the glow and the light by standing on his property. It would cut down on the ability to see stars at night, and there would be additional light pollution such as on his deck that faced the park. He agreed if there were going to be poles then they should go with the 70-foot poles. It would cut down the light pollution somewhat. His main concern was that at some point the people who wanted to play baseball games would take a look at the hours and think they might want to triple playing time by turning the

lights off at 11:30 p.m. He was concerned at some time that the hours of lighting might be fudged.

Councilor Loomis would almost guarantee that parents and children would not stay at the park past 10:00 p.m.

Mr. Shook was not that worried about the kids, but he understood the some older groups might use the fields and ask for extended hours.

Mayor Bernard understood there was specific reference to the lights being off at 10:00 p.m., so in order to exceed the time limit, the District would have to go through another variance application.

Ms. Nesbitt replied the code did not limit the time, but the previous approvals and the applicant's narrative indicated specific times approved through the CSO. The applicant could agree to a condition limiting the hours the lights could be turned on. In the future, the applicant would have to come back to the City Council for approval.

Councilor Loomis commented in his experience in coaching youth sports. In Lake Oswego for example people were scrambling to find their equipment when the lights went off at 10:00 p.m.

Ms. Nesbitt understood the ballfield lights were on a timer and would go off at 10:00 p.m., and the parking lot lighting would be on until 10:30 p.m.

- **Susan Shawn, 13655 SE Briarfield Court, Oak Grove.**

Ms. Shawn had one major concern and one comment she wanted the City Council to consider. Her major concern had to do with what she called wetlands #5 at the top of the ballfield. There were a number of light poles in the area, and the light might cause harm to the plants and wildlife in the area. It was poorly protected at this time. The buffers were supposed to be 50-feet. She wondered if there was some way the Council could add another condition that might read, "The light spill, either direct or indirect, into that water quality resource area shall be studied after installation by biology experts, and if found to be harmful, the Parks District shall either adjust the offending lights, or remove them if necessary." She suggested that there be some way to build in a remedial action – just in case.

She recently heard Sheriff Craig Roberts talk about plans to house sex offenders in a motel off McLoughlin Boulevard across from the Bomber Restaurant. Some of them were predatory child sex offenders. She understood the County was trying to house up to 30 people in the motel. The Sheriff's office did not have enough money to pay for a full-time supervisor for that facility to assure community safety and prevent the offenders' returning to jail. She thought an option would be to deny the variance request and suggest to the County that it use that \$181,000 for the lights for the immediate community safety need or a similar community development project that the Sheriff might identify. She agreed with Mr. Shook that the coaches did at one time acknowledge they did not need the lights for youth tournament play. The original \$3 million for the ballfields was the decision made by the County Commissioners on June 22, 2004 without a community-wide discussion and without taking into account other pressing County needs. She realized it was a stretch and that the City Council would

probably not do it, but she felt compelled to say here was an opportunity to address something that was really a bad move on the County's part.

Mayor Bernard agreed that was likely a stretch and noted frequently money could probably not be moved around in that manner. Grant money was specifically used for certain projects.

Councilor Loomis understood the District was applying for grants for the lights.

Mr. Ciecko replied there was a grant application into the Baseball Tomorrow Fund, which was a charitable arm of major league baseball for this particular element. That was not the only opportunity to fund installation of lights, however. The District would continue to look at all possible funding sources to make the project whole.

- **Eric Shawn , 13655 SE Briarfield Court, Clackamas County.**

Mr. Shawn said the photometric plan addressed most of his questions, but he raised it for refinement. He commended the applicant for being willing to plant additional vegetation in order to reduce spill light on the south boundary on adjacent private property. He asked that the applicant double check the light spill in the area of what was now wetland #3 – at or near that particular area. Mr. Shawn indicated the area on the map. He believed that wetland would be filled as part of the project, but most of it was on the other side of the fence on private property. He did not think there was a gate at this location or tall trees or foliage along the fence line once the vegetation – mostly blackberries -- was removed. Once that foliage was gone he did not think there was anything to block the spill light. The photometric map showed that ideally there would be very little, and he did not have any reason to doubt the accuracy of the map. He trusted the engineering. He asked that that be double checked and possibly consider planting taller vegetation to block any spill light. He thanked the applicant for being willing to plant additional vegetation.

- **Gloria Koch, 6030 SE Eric Street, Clackamas County.**

Ms. Koch had been a Rusk Road area resident since the 1950's. She provided some background however she did not have any documentation to back up her statements. She thought the lighting was a done deal and that there would not be any lighting except for the parking lot. She attended meetings and hearings since this matter was before the DAB. There was a long list of things they wanted done, and there was only so much money. They asked Kids First to set out their priorities, and lighting was low, if not the last thing, on the list of what they needed to build a competitive baseball complex. The proposal was that they were going to start practices in late spring before school was out. They would begin their games after a certain amount of time and carry them on throughout the summer. They allowed two hours per game. By starting at 6:00 p.m. they could have one game that would end by 8:00 p.m. Then they could go into a second game that would be finished by 10:00 p.m. In the summertime, as stated on page 3, the lighting would be needed to compensate between the times the game was over and dusk. In the summer that was a very short time. It stays light quite late in the summer. This was a very minimal time of usage for these lights; maybe an hour at the most for every time there was a game there on those fields. Yet they were talking about spending thousands and thousands of dollars on the project just to put the lights in and not taking care of any maintenance. She had seen no such provisions in the budget

CITY COUNCIL REGULAR SESSION – JANUARY 17, 2006

DRAFT MINUTES

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that included maintenance, and they would have to be maintained. They could not be put up and forgotten. She did not understand the philosophy that this would double the playing hours because it would not. The children were quite young. When they were in the meeting for the Planning Commission last fall, Kids First brought a lot of kids to demonstrate to the Planning Commission the number of children who would be impacted by the use of these fields. Anyone sitting in that room would have noticed that all of the children started going home about 7:00 p.m., and they were all gone by 7:30 p.m. If they cannot attend a meeting on a school night past 7:30 p.m. because they had to go home and go to bed for school the next day, then how could they attend baseball practices in May on school nights when they would need lights from 8:00 p.m. to 10:00 p.m.? They set the example that the kids needed to be at home and in bed by 7:30 p.m. That did not hold with the philosophy that they could hold practices on these fields until 10:00 p.m. at night. What they demonstrated and what they said were opposites. In the summer time when there was no school, it was feasible that the parents might let their kids stay at the park until 10:00 p.m. if there were lights. She had two grandsons, and by 10:00 p.m. at night they needed to be at home. They did not need to be out on a playground. She did not believe the 8:00 p.m. to 10:00 p.m. time span was viable. Not for children of that age as demonstrated by the fact that parents took their kids home.

She asked if there had been any environmental impact study done on what would happen to the four-legged inhabitants of the park when these lights went in and especially in the wetland area? She understood that before something like this was done that there would have to be an environmental impact study.

Mr. Ciecko replied there was an analysis but not an EIS in the federal government sense.

Ms. Koch questioned the need to spend all this money to put the lights in. There was no money to maintain them. In her experience with children of this age she did not see parents allowing their children to stay up this late to practice in the spring and fall. They might in the summer. A lot of money was being used for a purpose that was not there.

- **Pat O'Donnell, 13318 SE Kuehn Road, Clackamas County.**

Mr. O'Donnell commented on the lights in the Park. When they were negotiating the changes for the Park so that everyone would agree, the lights were set aside. He understood youth sports would not need the lights and that there would not be enough money by the time the District got through with everything else. He was a neighbor of the Park, and if they lit it up it would be like looking at a prison yard with little prisoners who should be at home in bed. When they started this, they were not talking about lights. He understood they did not need the lights until he got notice of this meeting.

Rebuttal

Ms. Nesbitt addressed the testimony in opposition. She brought the two notices of decision that were issued for this application. The first was the Planning Commission decision, and the second was the amendments and the decision of the City Council. She addressed the lighting and water quality resource area. That issue came up in the public hearing before the Planning Commission. The application was subject to water quality resource review. They talked about lighting and impacts to the water quality resources. The Code stated that where practicable type, sizes, and intensity of the light

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must be placed so they did not shine directly into the natural resource locations. The legal finding in the notice of decision was that the applicant demonstrated the need to provide safe lighting for ballfields, and a condition was adopted requiring the applicant to, where practicable, limit lighting within the water quality resource area so that lighting would not shine directly into the natural resource location. As conditioned, the application complied with MMC 322.10(i), which was the applicable Code section. They did talk about that and what conditions could be legally adopted pursuant to the Code.

Ms. Nesbitt addressed the issue Mr. O'Donnell and other brought up regarding how they got to the modified plan. There were negotiations between the Parks District and the Friends of North Clackamas Park. She had reviewed the notice of decision and the proposed changes that the City Council approved, and lighting was not one of the changes. That was why they were here this evening because conditions were adopted regarding lighting. The original proposal was for 70-foot light poles and was why the condition was adopted requiring the applicant to reduce them to 50-feet, submit the variance, or request a text amendment.

Councilor Collette understood the lighting was included in the agreement.

Ms. Nesbitt replied that lighting was not omitted, and it was included with the findings. She had specific findings in the notice of decision that were upheld by the City Council regarding lighting and the conditions that resulted in this hearing because that was adopted.

Councilor Stone had a question regarding the wetland area in terms of the lighting stipulations where it had to be placed in relationship to the wetlands and not shining directly there. The Council heard testimony that spill lighting was a concern in terms of wildlife. She asked if that had been addressed in terms of how that would affect the environment.

Ms. Nesbitt replied there was originally a condition that there could be no spill light into the water quality resource area. The applicant challenged that because the specific language was "shine directly into" so spill lighting did not shine directly into. That condition was taken out because it did not have any legal standing.

Councilor Stone asked if there was any scientific documentation that would state that spill light was not a good thing in the wetlands.

Ms. Nesbitt said the applicant did not submit scientific documentation addressing spill light into the wetlands. There was no code requiring submission of that material.

Mr. Ciecko added this matter was discussed before the Planning Commission. As he recalled the majority of the science available on the impact of night lighting on wildlife and in particular bird life had to do with tall buildings where the lights were on 24-hours a day and the impacts that lighting had on migration. That issue was discussed in some detail before the Planning Commission. He recalled there was little if any science that would suggest there were any negative impacts associated with limited term night lighting associated with sports fields.

Mr. Fout reiterated that the existing body of evidence of how 24-hour lighting impacts biology mostly pertained to certain specific species or guilds. These had to do with pier lighting affecting salmonoides migrating along a shoreline or migratory birds striking

large towers or buildings. There was no existing body of evidence or studies that related to curfewed lighting systems as they related to athletic fields.

Councilor Collette followed up on Mr. Shawn's comment about the wetland area and if the District would be willing to look at planting additional foliage near wetlands #3 to address additional spill light after the vegetation was removed.

Mr. Ciecko understood that the landscape plan called for enhanced vegetation along the south boundary where there were voids that were not owing to the gates that provided access to adjoining private properties. The answer to Councilor Collette's question was "yes."

It was moved by Councilor Barnes and seconded by Councilor Collette to close the public hearing. Motion passed unanimously. [5:0]

Mayor Bernard closed the public hearing at 8:30 p.m.

Mayor Bernard recommended adding a condition of approval that the lights be turned off at 10:00 p.m.

Ms. Nesbitt said it was stated in the applicant's narrative but not specifically listed in the conditions of approval. If the applicant accepted that condition, then it could be added. She noted the lighting for the ballfields would be shut off at 10:00 p.m. and the parking lot would be shut off at 11:00 p.m.

Mayor Bernard wanted to add the condition of approval that the ballfield lights would be shut off at 10:00 p.m. for the fields.

It was moved by Mayor Bernard and seconded by Councilor Loomis to approve the request to modify the adopted condition of approval that increased the amount of spill light at the property line from 0.5-foot candles to 1.0-foot candles and approve the variance request authorizing installation of 70-foot tall lighting poles and add the condition that the ballfield lights be automatically shut off at 10:00 p.m.

Councilor Loomis stated this was a discussion of a variance and that the lights were already part of the plan. It made it safer for the players, and there was less spillage on the neighborhood.

Councilor Collette saw this as a relatively small decision in that the poles were now 64-feet and the request was for 70-foot poles. It sounded as if there was some mix of opinion but that there was growing support for the compromise plan. She coordinated summer concerts and understood how difficult it was to pack up gear at the end of an event. She felt ballfield lighting was important.

Councilor Barnes noted the nearest house to these lights was 480-feet. Kids do play baseball in the summer and late spring and early fall after 8:00 p.m. at night. She would rather they were playing ball than breaking into houses.

Councilor Stone would vote in support of the variance to make the poles higher because they would cause less spill light and be safer for the players. She commended the District and Friends group for working together on the process. The August proposal was good, and judging by how well they worked together she felt if there needed to be vegetation planted and more buffers added to mitigate the spill light in the

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wetlands and residences that that would be done in good faith. She trusted that would happen in this process because it seemed it had been very fair thus far.

Councilor Loomis guaranteed the fields would be used and would be greatly appreciated by those associated with youth sports. This was really needed by the City of Milwaukie and the Parks District. It added a curb appeal for those coming to tournaments from outside the District and showed that the community cared for its youth. The rewards of this project would be awesome for the community and the District. Councilor Loomis commented on Mr. Ciecko's work in getting everyone through this process.

The motion passed unanimously. [5:0]

Ms. Koch asked if there would be a penalty if the lights did not go off.

Mayor Bernard replied that would be discussed with the District.

Any party with standing may appeal the decision of the City Council to the State Land Use Board of Appeal according to the rules adopted by that Board. The written decision will contain an explanation of the appeal rights.

OTHER BUSINESS

Council Reports

Councilor Loomis discussed comments from the Saturday Coffee. There was a desire on the part of the attendees to have the open public forum back on the work session agenda. It also came up that the City Council needed to meet with its standing committees.

Mayor Bernard noted that he had requested a meeting with the Planning Commission as soon as possible to discuss the shared visions.

Councilor Collette was on the Clackamas Community College School Board, and the school approved and would begin work on the development of the Harmony Campus site as its next expansion. They would be coming to various organizations to discuss the expansion plans for that site. She had been talking informally with people interested in an Arts Commission or foundation in Milwaukie. The Clackamas County Coordinating Committee (C4) met for a retreat and would work on priorities such as transportation projects.

Mayor Bernard would make a State of the Cities address at the Chamber of Commerce along with several other mayors in the area.

ADJOURNMENT

It was moved by Councilor Barnes and seconded by Councilor Collette to adjourn the meeting. Motion passed unanimously. [5:0]

Mayor Bernard adjourned the regular session at 8:45 p.m.

Pat DuVal, Recorder



To: Mayor and City Council

Through: Mike Swanson, City Manager
Kenny Asher, Community Development/Public Works Director
Kelly Somers, Operations Director

From: Ernie Roeger, Fleet Supervisor

Subject: Amend Contract Amount for HVAC Repairs and Maintenance for City Facilities

Date: February 9, 2006 for the February 21, 2006 City Council Meeting

Action Requested

Amend \$20,000 contract with EW Consulting and Services up to \$35,000 for current fiscal year.

Background

The City requested quotes from various HVAC repair and installation companies in July of 2004. At that time we entered into a contract with EW Consulting and Services that is renewable for four additional years (for a total of five years). This contract is in the amount of \$20,000 per year.

Several of the divisions and departments of the City are using EW Consulting and Services to do installations and repairs of HVAC equipment under this contract, including the Public Works Divisions: Facility Maintenance, Fleet Maintenance, Water, Waste Water, and Streets.

Fleet Maintenance has recently converted a wash bay to a work bay that now needs a ventilating system. Fleet maintenance needs the increase on the contract to install the ventilating system for the new work bay. The cost of this system is estimated to be approximately \$5,000.

Because of the many divisions and departments using this vendor, staff requests Council authorization to increase the contract limit to \$35,000 to cover this fiscal year. The remaining years of the contract will continue at \$20,000 a year. The amended amount (\$35,000) is sized to cover anticipated HVAC needs that may occur during the remaining months of this fiscal year.

Concurrence

The Water, Stormwater, Fleet, Facility, and IST Managers have all coordinated on all aspects of this request.

Fiscal Impact

Fleet has budgeted \$10,000 [includes contingency] for this project. Other funds will be drawn against this contract depending on which department is utilizing the service.

Work Load Impacts

None.

Alternatives

1. Do not approve the changes to this request
 - This would require each division and department to contract with alternate vendors.



To: Mayor and City Council

Through: Mike Swanson, City Manager
Kenny Asher, Community Development / Public Works Director
Kelly Somers, Public Works Operations Director

From: Willie Miller, Facility Maintenance Coordinator

Subject: Amend Contract Amount for Carpentry Work and Repairs for City Buildings.

Date: February 3, 2006 for February 21, 2006 City Council Meeting

Action Requested

Amend \$15,000 contract with Craftsman Home Remodeling Services up to \$40,000 for current fiscal year.

Background

Staff requested quotes from various construction contractors in June 2005 for carpentry work. In August of 2005, the City entered into a contract with Craftsman Home Remodeling Services.

Several of the divisions and departments of the City are now using Craftsman Home Remodeling Services to do carpentry work under this contract, including the Public Works Divisions: Facility Maintenance, Fleet Maintenance, Water, Sewer, Waste Water, and Streets.

Several projects have been scheduled and or completed by Craftsman Home Remodeling Services this fiscal year:

- . Operations building elevator structure.
- . Operations building doors and windows installation.
- . Operations building custom book shelves.
- . City Hall Centennial Quilt display case.
- . City Hall Council Chambers emergency exit door installation.

- . City Hall vault book shelves design, construction and installation.
- . Library tables and book shelves repairs.

Because of the many divisions and departments using this vendor, staff requests Council authorization to increase the contract limit up to \$40,000 to cover this fiscal year. The amended amount (\$40,000) is sized to cover the added carpentry work for the elevator project and anticipated carpentry work needs that may occur during the remaining months this fiscal year.

Concurrence

The Water, Sewer, Stormwater, Street, Fleet Supervisor, and Facility Maintenance Coordinator have all concurred with all aspects of this request.

Fiscal Impact

\$20,000 for carpentry work related to the elevator project is funded by the Street, Water, Wastewater and Stormwater budgets. Staff also budgeted \$15,000 for future anticipated carpentry work in the Facilities budget. The remaining \$5,000 is for future anticipated carpentry work that may be needed by the other divisions (not facilities).

Work Load Impacts

None.

Alternatives

1. Do not approve the changes to this request.
 - This would require staff to solicit alternate vendors.



To: Mayor and City Council

Through: Mike Swanson, City Manager

From: JoAnn Herrigel, Community Services Director

Subject: Metro Open Space Bond Measure – Project Selection

Date: February 9, 2006

Action Requested

Approve a resolution supporting the list of local share projects to be funded by a Metro Open Space Bond measure proposed for the November 2006 ballot.

Background

Metro will place a Parks and Open Space Measure on the November 2006 ballot. The likely size of the measure will be \$220 million. One component of the measure will be an allocation to local governments and park providers known as the "local share." The amount of the "local share" will be \$44 million. Of this amount, approximately \$10,507,200 will be distributed among Clackamas County, eligible cities and North Clackamas Parks and Recreation District (NCPRD). NCPRD's estimated allocation is \$2,406,149. The City of Milwaukie's estimated allocation is \$657,751. The City has been asked to provide Metro with a list of potential local share projects by March 1, 2006.

In order to develop a list of projects for the Metro Bond Measure, staff first looked at the results of a City-run process completed in the mid 1990s that identified areas of the City that were underserved by park facilities. During that process, which involved significant input from the City's neighborhood membership, several areas of the City were identified as "in need" of park and open space facilities. As part of an effort to meet this need, the City purchased properties in the Hector Campbell (now, Homewood Park) and Lewelling neighborhoods (now, Lewelling Community Park.) Today, two areas that had been identified as underserved during this process remain underserved. They are: the area west of 32nd Avenue in the Ardenwald Neighborhood and the area south of Lake Road in the Lake Road neighborhood. Staff has placed these two areas on the list for the 2006 Metro Bond measure.

City staff also discussed potential projects with the Johnson Creek Watershed Council and has identified potential project sites along Johnson Creek, located inside Milwaukie, for Metro funding. In addition, it is possible that through discussions with the Friends of Mount Scott and Kellogg Creek or, as a result of the Kellogg Lake feasibility study currently being conducted by the US Army Corps of Engineers, properties along Kellogg Creek may become eligible for acquisition in the next few years. Thus, a placeholder has been established on the City's list for potential acquisition for these areas.

The remainder of the City's list includes capital enhancement projects for parks already owned by the City. These projects meet two criteria: first, they have been on the City's "to do" list for some time, and second, they appear to be eligible for funding under the proposed criteria for the 2006 Bond Local Legacy program.

Staff discussed this potential project list with the Milwaukie Parks Board (PARB). The PARB recommended that the City focus the majority of local share funds on land acquisition (maybe 65%) and spend the remaining dollars (35%) on projects like the Riverfront Park and Spring Park. This recommended distribution scheme was considered in the formation of the attached list.

Staff also reviewed this draft project list with the NDA leadership group at their January 25 meeting. The Linwood Neighborhood Chair expressed an interest in park space in that neighborhood. Given the available park and open space in the Linwood neighborhood, staff is not recommending this as a target area at this time.

As with the 1995 Local Share funding, it is expected that staff and Council will be in regular communication regarding target properties and projects to be pursued under this Bond Measure. This list, of necessity, may be modified or amended following the passage of the Metro Bond Measure passes.

Attached is a list of proposed projects.

Metro 2006 Park and Open Space Bond Measure
Milwaukie Local Share Projects

Acquisition

- Land Acquisition – West of 32nd Ave
- Land Acquisition – South of Lake Rd.
- Creek-side acquisition – Johnson Creek/Kellogg Creek

Site Enhancement - Capital Improvements

- Milwaukie Riverfront Park Development (Natural areas or paths)
- Wetland Enhancement and Trail at Spring Park
- Play equipment for Homewood Park
- Trail for Minthorn Wetland

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON,
APPROVING THE CITY OF MILWAUKIE'S LOCAL LEGACY PROGRAM PROJECT
LIST TO BE FUNDED BY METRO'S PARKS AND OPEN SPACE BOND MEASURE.**

WHEREAS, in December 2004, Metro Council adopted resolution No. 04-3506A which resolved to take before voters an acquisition and restoration program bond measure by November 2006; and

WHEREAS, the proposed \$220 million bond measure will include a Local Legacy Program, or "local share" program, that will distribute funds to local park providers for local projects; and

WHEREAS, the city of Milwaukie is entitled to receive a local share allocation of Parks and Open Space Bond measure funds estimated at \$657,751;

WHEREAS, in order to inform voters prior to the vote on this ballot measure, local governments eligible to receive local share funds, need to submit an approved Project List to Metro by March 1, 2006; and

WHEREAS, City staff has reviewed potential projects with the Milwaukie Park and Recreation Board and the Neighborhood Leadership group.

NOW, THEREFORE, BE IT RESOLVED that the City of Milwaukie approves the Local Share Program List to be funded by Metro's 2006 Parks and Open Space Bond Measure.

Introduced and adopted by the City Council on _____

This resolution is effective on _____

James Bernard, Mayor

ATTEST:

APPROVED AS TO FORM:
Ramis, Crew, & Corrigan, LLP

Pat DuVal, City Recorder

City Attorney



TO: MAYOR AND CITY COUNCIL
FROM: MIKE SWANSON, CITY MANAGER
DATE: FEBRUARY 10, 2006
**RE: PROPOSED ORDINANCE AMENDING MILWAUKIE MUNICIPAL
CODE TITLE 3—SUBCHAPTER 3.20 RELATING TO THE
ANNUAL LEVY OF THE CITY'S PERMANENT RATE BY
REQUIRING A FURTHER REDUCTION OF THE ANNUAL LEVY.**

ACTION REQUESTED

The action requested is adoption of the proposed ordinance, which requires a further annual adjustment of the City's levy of its permanent rate to comply with the City's commitment that the "total property tax rates of the City and CFD1 within the City will not change" upon annexation of the City to CFD1.

BACKGROUND

- On May 17, 2005 Milwaukie voters approved Ballot Measure 3-166 by a margin of 85.64% to 14.36%. It posed the following question: "Shall Milwaukie annex to CFD1 for fire and emergency medical services and reduce City tax certification to prevent tax increase?"
- The Ballot Measure Summary reads as follows:

If approved this measure will annex the territory within the City to Clackamas Fire District No. 1 (CFD1). City residents will continue to receive fire and emergency medical services from CFD1. CFD1 is a service district governed by an elected Board of CFD1 residents. It provides fire and emergency medical services. The City will continue to provide all other services it currently provides. The measure also requires that the City reduce its property tax rate certification so that the total rate levied by the City and CFD1 is no more than the total rate they currently levy. Voter approval at a future election would be required to increase the City's tax rate.

If the annexation is approved, CFD1's permanent tax rate (2.4012 per \$1,000 of assessed valuation) is assessed on real property within the City effective July 1, 2005, and the City will reduce its tax rate certification by the same amount. Taxes cannot be increased without voter approval.

- The “Explanatory Statement for County Voters’ Pamphlet” provides that “[t]he measure, if approved, will require the City to reduce its tax rate in the same amount (as the CFD1 permanent rate) when it certifies its taxes to the County Assessor. The result is that total property tax rates of the City and CFD1 within the City will not change.” It also provides as follows:

The measure, if approved, will incorporate the following provisions into the Milwaukie Municipal Code.

1. All territory within the City of Milwaukie is annexed to Clackamas County Fire District No. 1 effective July 1, 2005.
 2. Except as provided in Section 3 below, in order to avoid an overall property tax increase on property within the City, the City shall adjust the property tax rate it certifies annually to the County by reducing the City tax rate by 2.4012 per \$1,000 of assessed valuation for any year in which property within the City is required to pay property tax to CFD1.
 3. The City may certify a property tax rate higher than the rate resulting from application of Section 2 only if the voters of the City approve the higher tax rate.
- In developing the FY 2005-06 City budget, the City certified a levy of 4.1367/\$1,000 of valuation as promised. The levy was calculated by reducing the City’s maximum permanent rate (6.5379) by the amount of the CFD1 permanent rate (2.4012). Thus, a Milwaukie tax statement shows a City levy of 4.1367 and a District levy of 2.4012.
 - However, a mistake was made during development of the ballot measure. The CFD1 bonded debt for capital was not considered as a part of its total levy when preparing the annexation ballot measure. Thus annexation of the City to CFD1 resulted in a levy of both CFD1’s permanent rate as well as its levy for bonded debt. In addition to the levies listed above, a Milwaukie tax statement will show an additional CFD1 levy for bonded debt. The rate for FY 2005-06 is 0.1520/\$1,000 valuation. This results in an increase of the total CFD1 levy amount in excess of the commitment made by the City in placing Measure 3-166 on the ballot.
 - The District did not realize additional revenue with the extension of its levy for bonded debt to the City. In fact, CFD1 anticipated the same result that the City anticipated. The Assessor properly extended the levy for bonded debt to the whole of the newly formed CFD1, which now includes the City of Milwaukie.
 - Why did CFD1 not realize additional revenue? In certifying a levy a taxing jurisdiction may certify either a rate or an amount. CFD1 certifies a rate for general operations, and it certifies an amount for bonded debt. For FY 2005-06 it certified its permanent rate of 2.4012/\$1,000 of assessed valuation for its general operations, and it certified \$1,425,848 for Oak

Lodge Fire District No. 51, General Obligation Bonds, Series 1995¹ and Clackamas County Fire District No. 1, General Obligation Bonds, Series 2001. Upon annexation of the City on July 1, 2005, the CFD1's assessed value increased. Its levy for bonded debt was the same amount it would have been had the annexation failed, but with the successful annexation of the City the amount certified was spread over an increased assessed value. (The Assessor will calculate the effective rate after each taxing jurisdiction certifies its levy.)

- The City admitted the error and announced that it will honor the commitment made during the election. The question is how that is done. Two general options are available. One is to distribute annual checks for each tax lot. The other is to adjust the City's levy of its permanent rate in order to reach the result that was intended. I am recommending the latter approach.
- If one applies the FY 2005-06 effective rate on the CFD1's bonded debt (0.1520/\$1,000 assessed valuation) to the average assessed value for a residential property (\$130,580), the resulting tax is \$19.85.² The Assessor maintains 6,096 residential accounts within the City; there are a total of 7,857 accounts, which is the number of checks that would be required, many of them relatively small. A major challenge with this approach arises from the nature of Oregon's property tax system. Many people pay their property tax in installments, while others submit one payment, taking advantage of the discount allowed. We do not know who chooses which option. We also do not know which accounts are delinquent, nor do we know when or if a delinquency is made current. (I do know that many delinquencies drag on for years.) This all makes payment by check difficult. In addition, payment by check is expensive.
- The less costly approach is an adjustment of the City's levy of the permanent rate in the year following the incidence of the tax. In other words, we would adjust the levy during the current budget process by applying CFD1's effective rate for bonded debt from the previous year (0.1520/\$1,000 assessed valuation) against the City's assessed value for the same year (\$1,307,097,910) to arrive at an amount. For FY 2005-06 it is \$198,679, which represents the excess above the commitment we made in placing Measure 3-166 on the ballot. We then calculate the rate that would raise that same amount. We then certify a levy that is calculated by first reducing our maximum permanent rate by the District's permanent rate and then reducing that number by the rate for bonded debt. Why do so in the year following the incidence of the tax? First, we

¹ Oak Lodge Fire District No. 51 had previously merged into Clackamas Fire District No. 1. Upon the merger, the latter assumed the bonded debt of the former.

² The average assessed residential value within the City of Milwaukie was provided by the Clackamas County Assessor's Office.

already missed year one, and the only way we can make that adjustment is by applying the “cut” in the following year. Second, the tax system requires that the Assessor provide us with the effective rate too late to have imposed the “cut” in the year of its incidence.

- What about the future? It is difficult to predict the annual amount of either the rate or the amount needed beyond the current fiscal year. There are a couple of reasons. First, the District’s requirements will change. For example, during the current fiscal year, one bond issue—Oak Lodge Fire Protection District No. 51, General Obligation Bonds, Series 1995—matured and was paid off. This reduces CFD1’s requirement for funds beginning the next fiscal year. In addition, as we approach the maturity of the remaining issue—which is in 2015—the District will most likely use reserve funds to pay all or a portion of the annual principal and interest. Finally, as the assessed value of both the District and the City increase over the next nine years, even if the required funds remain the same, the effective rate will fall. The obligation will finally terminate in 2015, after which we will return to the simpler 4.1357/\$1,000 valuation (assuming that the City has not received voter approval of an increase).
- What steps are required to implement the recommendation? First, we need Council approval, which will include an amendment to the Code provisions set forth above. That is scheduled for the February 21, 2006 Council meeting. Second, we will make the necessary adjustment to the City’s levy as we complete the budget. Third, we need to ensure that we effectively announce the steps we are taking. A clear benefit of checks is their visibility. We will need to make certain that we get people’s attention and ensure that they receive adequate information with the budget adjustment approach.

FISCAL IMPACT

The total amount levied during FY 2005-06 in excess of the commitment made is \$198,679. If the recommended course of action is implemented, the maximum General Fund revenue derived from the property tax levy during FY 2006-07 will be reduced by that amount.

budreviewjan31

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING MILWAUKIE MUNICIPAL CODE TITLE 3—SUBCHAPTER 3.20 RELATING TO THE ANNUAL LEVY OF THE CITY'S PERMANENT RATE BY REQUIRING A FURTHER REDUCTION OF THE ANNUAL LEVY AND DECLARING AN EMERGENCY.

WHEREAS, on May 17, 2005 the electors approved Ballot Measure 3-166 (Measure), which authorized annexation of the City by Clackamas Fire District No. 1 (CFD1) effective July 1, 2005; and

WHEREAS, the Measure, if approved, required that the City “reduce [its] tax certification to prevent [a] tax increase;” and

WHEREAS, the Explanatory Statement” filed with the Measure stated that the result of an approval “is that total property tax rates of the City and CFD1 within the City will not change;” and

WHEREAS, approval of the Measure included the addition of Title 3—Subchapter 3.20 to the Municipal Code, which provided a process by which the City's maximum permanent rate would be reduced in order to meet the commitment to ensure that the combined rate of the City and CFD1 would not change upon annexation unless otherwise approved by the voters; and

WHEREAS, upon annexation the CFD1 levy for bonded debt for Oak Lodge Fire District No. 51, General Obligation Bonds, Series 1995 and Clackamas County Fire District No. 1, General Obligation Bonds, Series 2001, was properly extended to the area within the City; and

WHEREAS, the levy for bonded was mistakenly not anticipated in the annexation planning and resulted in a combined levy higher than that which was anticipated; and

WHEREAS, the City has indicated its intention to take action to meet the commitment made as outlined above;

NOW, THEREFORE, THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:

Section 1. Milwaukie Municipal Code Title 3—Subchapter 3.20 is amended to read as follows:

1. All territory within the City of Milwaukie is annexed to Clackamas Fire District No. 1 effective July 1, 2005.
2. Except as provided in Section 4 below, in order to avoid an overall property tax increase on property within the City, the City shall adjust the property tax rate it certifies annually to the County by reducing the City tax rate by 2.4012 per \$1,000 of assessed valuation for any year in which property within the City is required to pay property tax to CFD1.

3. Except as provided in Section 4 below, in order to avoid an overall property tax increase on property within the City, the City shall adjust the property tax rate it certifies annually by an additional adjustment for property tax levied by CFD1 for bonded debt for Oak Lodge Fire District No. 51, General Obligation Bonds, Series 1995 and Clackamas County Fire District No. 1, General Obligation Bonds, Series 2001. The adjustment shall be determined by calculating the amount levied on property within the City for that bonded debt and reducing the property tax rate it certifies in the subsequent fiscal year by the rate required during the subsequent fiscal year to compensate for the amount paid the previous year.
4. The City may certify a property tax rate higher than the rate resulting from application of Sections 2 and 3 only if the voters approve the higher tax rate.

Section 2. In the interest of the public and good governance this ordinance takes effect immediately upon passage.

Read the first time on February 21, 2006, and moved to second reading b
by a _____ vote of the City Council.

Read the second time and adopted by the City Council on _____

Signed by the Mayor on _____.

Jim Bernard, Mayor

ATTEST:

APPROVED AS TO FORM:
Ramis, Crew, & Corrigan, LLP

Pat DuVal, City Recorder

City Attorney

CUAB MEETING MINUTES
Wednesday, January 11, 2006
Johnson Creek Facility Conference Room
6101 SE Johnson Creek Blvd.

Members Present

Bob Hatz, Chair
Charles Bird, Vice Chair
Betty Chandler
Ed Miller

Staff Present

Paul Shirey, Engineering Director
Jay Ostlund, Civil Engineer

Others Present

Jim Helton, Consultant

I. CALL TO ORDER

Chair Hatz called the meeting to order at 6:00 p.m.

II. INTRODUCTIONS—None.

III. CONSENT AGENDA

October 5, 2005, Minutes approved as presented.

IV. REPORTS

A. Well 8 status and update

Jim Helton, with consultant Murray Smith and Associates, presented conclusions of a study that examined three alternatives for dealing with Well 8. Well 8 production is half its original production due to bacteria issues thought to be caused by the need to mix well water with water the City purchases through an intertie connection with Clackamas River Water (CRW). The consultant's recommendation is to drill a new well adjacent to, but on the same site as, the current well. Repair of the well in place is problematic and there is no need to spend nearly \$1 million to locate an entirely new well site. The cost of the alternative selected is about \$300,000. The process will be split into two phases: 1) design and drill the new well at a cost of about \$150,000; then, if the well performs as anticipated, 2) move the existing Well 8 infrastructure to the new, adjacent site and construct new elements as required for a cost of about \$150,000.

The Board asked a number of questions and had concerns about existing groundwater contamination and whether it was possible to just redrill the shaft at the existing well. Contamination is not present at, or even proximate to, the Well 8 site, located near Hwy 224 and Lake Rd. Because elements of the existing well cannot be removed and would impede drilling, a new shaft has to be drilled.

Some Board members recalled being told by staff several years ago that no new wells could be drilled anywhere in Milwaukie. This was really an overgeneralization since the southeast quadrant of the city has no identifiable groundwater contamination.

The Board unanimously endorsed the recommendation of the consultant and staff to pursue the new well on the same site. There is some risk that the new well will not produce at the rates anticipated. The City does bear a risk but the consultant feels that it is the least risky option available.

V. DISCUSSION

A. Status of "Clearwater" project and next steps

Paul Shirey briefed the Board on the Board of County Commissioner's recent decision to send the Clearwater recommendation to a newly created seven-member citizen committee for a ten-month reconsideration. The action was taken to quell the negative reaction to Clearwater by a very vocal minority of CCSD#1 ratepayers. The City of Milwaukie has no official representation on the Committee, which is comprised of ratepayers only (City of Happy Valley and unincorporated County). The Board and the Committee have expressed commitment to an open and inclusive process that considers all interests and points of view. The Board has charged the Committee with responsibility to make a recommendation that all parties can live with no later than September 30, 2006.

It is not clear what steps, if any, are needed to deal with continuing to operate the Kellogg treatment plant. There are open questions regarding the apparent need for the District to enhance Kellogg to meet new discharge requirements imposed by State regulators.

VI. MATTERS FROM THE BOARD—None.

VII. OTHER—None.

VIII. INFORMATION SHARING—None.

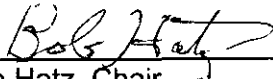
IX. FUTURE MEETING DATE/AGENDA ITEMS

Wednesday, February 1, 2006:


- Final review for Wastewater Master Plan
- CUAB Workplan for 05/06—status report

X. ADJOURN

The meeting adjourned at 8:07 p.m.



Bob Hatz, Chair



Paul Shirey, Scribe